

## COMMITTEE REPORT

**Date:** 19 November 2020      **Ward:** Strensall

**Team:** East Area      **Parish:** Strensall With Towthorpe  
Parish Council

**Reference:** 19/02463/FULM

**Application at:** Foss Upstream Storage Area Brecks Lane Strensall York

**For:** Formation of flood storage area consisting of construction of earth embankment with spillway, excavation of two temporary and two permanent borrow pits, erection of river flow control structure, re-profiling of sections of the River Foss, realignment of short section of Black Dike, raising of section of Ings Lane, carriageway edge protection to part of Lilling Low Lane and associated new and improved access arrangements, drainage, accommodation works, landscaping and biodiversity mitigation (cross boundary application with Ryedale)

**By:** Mr Richard Lever

**Application Type:** Major Full Application

**Target Date:** 16 November 2020

**Recommendation:** Approve

### 1.0 PROPOSAL

1.1 The proposal is a cross boundary planning application for flood alleviation works to the River Foss submitted by the Environment Agency. The majority of the application site lies within the Ryedale District Council area and the remainder in York. As set out in government guidance for cross boundary development, identical planning applications have been submitted to both Ryedale and York. Each planning authority will determine the applications for the elements of the proposed development within their own areas and the purpose of this report is to consider the proposed development in York.

1.2 The application site within York lies approximately 1.5 kilometres to the northeast of Strensall and is approximately 7 hectares in area. Within York, the site lies in flood zone 3 and within the general extent of the York Green Belt. To the south of the site lies Strensall Common, the most northerly lowland heath site in Britain. The site is bound by the River Foss and also contains a section of the Black Dike which is a drainage ditch. The remainder of the area is grassland. There are woodland copses to the north west and to the south. The surrounding area is predominantly open farmland in arable use.

1.3 There is a long history of flooding in York and following flooding in 1978, defences were installed, or greatly expanded. The observation that greater flooding arose under certain conditions from the Foss rather than the Ouse led to the Foss Flood Barrier installation in 1987. Storm Desmond in 2015 resulted in conditions that led to widespread flooding along the Foss and its tributaries. The height of the Foss reached a level that the Foss Barrier was lifted to prevent its potential failure. This resulted in the flooding of properties upstream of the barrier. Despite subsequent installation of new pumps and monitoring equipment it cannot be relied on alone to protect the vulnerable properties in the Foss corridor.

1.4 The applicant's planning statement sets out that "without any further interventions it is calculated that a total of 465 residential and 25 non-residential properties are at risk of flooding downstream along the Foss corridor from Strensall to York's urban area. The purpose of the proposed development is to restrict the maximum flow of the Foss meaning that during flood conditions excess water will back up and be temporarily stored behind an embankment thereby preventing this water flowing downstream. This will protect not only the vulnerable properties in the Foss corridor but also contribute to protecting other areas in York liable to flooding by not adding to the flow."

1.5 The proposal is to create a flood storage area that would, in flood conditions, hold back water that would normally continue to flow downstream. The proposed storage area is designed to store in excess of 1 million cubic metres of excess flood water. The flow control structure will allow water through the embankment along the line of the existing river. By controlling how much water can flow through, and by the embankment holding water back during high-flow conditions, potential flood waters will back up into a basin defined by the proposed new embankment and the natural topography of the land. This flood storage reservoir will only be full during a 1-in-100 year flood event.

1.6 The majority of the application site is in Ryedale and therefore some of the development referred to in the description is within the Ryedale area such as alterations to Lings Lane, the creation of borrow pits and wildlife ponds.

1.7 The elements of the flood storage area within the York boundary are as follows:

- Construction of earth embankment with spillway (which extends into Ryedale). The embankment will be a vegetated voided concrete slipway measuring approximately 3 metres in height, 25 metres in width and approximately 400 metres in length within the York section. The development will result in the creation of approximately 0.5 hectares of additional hardstanding.
- Erection of a river control structure which will straddle the River Foss (and the local authority boundaries) which will be a maximum height of no more than 4 metres above existing ground level with a further 0.9 metre handrail.
- Realignment, or straightening of Black Dike, approximately 119 metres in length. The applicant proposes that the bed of the old alignment of the Black Dike be backfilled with a layer of gravel prior to bulk infill, with a 'clay-plug' at its upstream end.
- River Foss re-profiling for a total length of approximately 1.3 kilometres (in York and Ryedale)

1.8 The application includes an Environmental Impact Assessment (EIA) or Environmental Statement (ES) dated November 2019. Under The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 the scheme is Schedule 2 development and it has been determined to require an EIA because there could be likely significant effects on the environment by virtue of the effect on the Strensall Common Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI).

1.9 The Environmental Statement contains environmental topics to cover the main aspects of the environment that could be affected by the proposal which are:

- Biodiversity and Nature Conservation
- Minerals and Material Resources
- Water Environment and Flood Risk
- Cumulative Effects

1.10 Following the consultation response of Natural England, which had no objection to the proposal but required additional information from the applicant, an addendum to the ES was submitted in February 2020 for consideration.

1.11 A further addendum was submitted in September 2020 covering the impact on agricultural land and soils. Both of these addendums were subject to statutory public consultation.

## RECORD OF CONSIDERATION OF A PROJECT UNDER THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017

1.12 The River Foss Upstream Storage Area project (planning application reference 19/02463/FULM) was considered in light of the assessment requirements of regulation 63 of the Conservation of Habitats and Species Regulations 2017 by City of York Council which is the competent authority responsible for authorising the project and any assessment of it required by the Regulations.

1.13 Following the 'shadow' appropriate assessment which included the consideration of detailed and specific hydrology and ground water modelling the competent authority was able to ascertain that the project would not adversely affect the integrity of any European site. In making that decision the competent authority took account of the potential for the project to contribute to cumulative effects of other plans or projects.

1.14 In reaching the conclusion of the assessment the competent authority took the following documents into account:

- ☐ Applicants 'shadow' Stage 1 Habitats Regulations Assessment, Version 23 January 2020
- ☐ Applicants 'shadow' Stage 2 Habitats Regulations Assessment, Final appropriate assessment, V1.0

1.15 Natural England was consulted on the above documents and has no objection to them in their consultation response dated 16<sup>th</sup> March 2020.

## 2.0 POLICY CONTEXT

### Yorkshire and Humber Regional Spatial Strategy (RSS)

2.1 The Yorkshire and Humber RSS was revoked in 2013 with the exception of the policies relevant to the York Green Belt. Policy YH9C states that the detailed inner boundaries of the Green Belt around York should be defined in order to establish long term development limits that safeguard the special character and setting of the historic city. The boundaries must take account of the levels of growth

set out in this RSS and must also endure beyond the Plan period. Policy Y1(c) states that plans, strategies, investment decisions and programmes for the York sub area should in the City of York LDF, define the detailed boundaries of the outstanding sections of the outer boundary of the York Green Belt about 6 miles from York city centre and the inner boundary in line with policy YH9C.

### National Planning Policy Framework

2.2 The revised National Planning Policy Framework (NPPF) 2019 was published on 19 February 2019 and sets out the government's planning policies for England and how these are expected to be applied. The NPPF is a material planning consideration in the determination of this application.

2.3 The planning system should contribute to the achievement of sustainable development (Paragraph 7). To achieve sustainable development, the planning system has three overarching objectives; economic, social and environmental objectives.

### Publication Draft Local Plan 2018

2.4 The Publication Draft City of York Local Plan 2018 ('2018 Draft Plan') was submitted for examination on 25 May 2018. Phase 1 of the hearings into the examination of the Local Plan took place in December 2019. In accordance with paragraph 48 of the NPPF the Draft Plan policies can be afforded weight according to:

- The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- The degree of consistency of the relevant policies in the emerging plan to the policies in the previous NPPF published in March 2012. (NB: Under transitional arrangements plans submitted for examination before 24 January 2019 will be assessed against the 2012 NPPF).

2.5 The evidence base underpinning the 2018 Draft Plan is capable of being a material consideration in the determination of planning applications.

### 2.6 Relevant Policies

DP2 Sustainable Development  
DP3 Sustainable Communities  
SS1 Delivering Sustainable Growth for York  
SS2 The Role of York's Green Belt  
D1 Placemaking  
D2 Landscape and Setting  
D6 Archaeology  
GI1 Green Infrastructure  
GI2 Biodiversity and Access to Nature  
GI3 Green Infrastructure Network  
GI4 Trees and Hedgerows  
GB1 Development in the Green Belt  
ENV2 Managing Environmental Quality  
ENV4 Flood Risk  
ENV5 Sustainable Drainage  
T1 Sustainable Access

### 2005 Development Control Local Plan

2.7 The Development Control Local Plan (DCLP) was approved for development management purposes in April 2005. Whilst the DCLP does not form part of the statutory development plan, its policies are considered to be capable of being material considerations in the determination of planning applications where policies relevant to the application are consistent with those in the NPPF albeit with very limited weight.

### 2.8 Relevant Policies

SP2 York Green Belt  
GP1 Design  
GP9 Landscaping  
GP14 Agricultural Land  
GP15a Development and Flood Risk  
NE2 River and Stream Corridors, Ponds and Wetland Habitats  
NE3 Water Protection  
NE4a International and National Nature Conservation Sites  
NE5b Avoidance of, Mitigation and Compensation for Harm to Designated Nature Conservation Sites  
NE6 Species Protected by Law

NE7	Habitat Protection and Creation
NE8	Green Corridors
HE10	Archaeology
GB1	Development in Green Belt
T2a	Existing Pedestrian/Cycle Networks

## Publication Draft Joint Minerals and Waste Plan 2016

2.9 The Minerals and Waste Joint Plan is currently at the examination phase. Examination hearings took place in spring 2018 and in January 2019. The Strategic Environmental Assessment (SEA) and Habitat Regulation Assessment (HRA) are currently being finalised by consultants and the joint authorities have sent through a Schedule of Modifications on the plan following the hearing sessions and additional government guidance on fracking. It was expected that a modifications consultation would take place this spring although now due to the coronavirus outbreak this has had to be put back.

### 2.10 Relevant Policies

- M01 Broad geographical approach to supply of aggregates
- M13 Continuity of supply of clay
- M25 Borrow pits
- S01 Safeguarding Mineral Resources
- S02 Developments proposed within Minerals Safeguarding Areas
- D05 Minerals and waste development in the Green Belt
- D12 Protection of agricultural land and soils

## **3.0 CONSULTATIONS**

### INTERNAL

#### Flood Risk Engineer

3.1 Although the majority of the works are in Ryedale the scheme will help to reduce the risk of flooding in York therefore the proposal has been assessed as if it was solely within York.

3.2 This Flood Alleviation Scheme (FAS) has been developed from the earliest stage, in full agreement with the appointed panel engineer assigned to the project,

to ensure full compliance with the Reservoirs Act 1975. This will ensure that the design, construction and future operation and maintenance of the scheme will be appropriately advised and, if all works are completed in accordance with the submitted planning documentation, the Flood Risk Management Team have no objections.

3.3 To summarise, if planning permission is to be granted, conditions should be attached in order to protect the local aquatic environment.

#### Design, Conservation and Sustainable Development(Ecology)

3.4 The ecological impacts in CYC are;

- ☐ River Foss temporary diversion channel – impact on water vole burrows.
- ☐ Flow control structure – impact on water vole burrows and movement of fish/eel
- ☐ Temporary river crossing – potential impact on water vole. River Foss re-profiling – potential impact on water vole
- ☐ Re-alignment of Black Dike – potential otter holt identified here
- ☐ Proposed wetland grassland mix.

3.5 There is some uncertainty as to the impact of the scheme on water vole and otter, which are highly mobile species. The Environmental Statement sets out the proposed approach for a pre-construction surveys and steps that would be taken if otter and water vole are found to be present, including obtaining the appropriate licences from Natural England. Post construction the river and ditch banks will be profiled to create 45 degree angle banks for water voles and planted with suitable wetland plants to provide foraging and sheltering resources, and their future management is included in the Landscape and Ecological Management Plan. The scheme overall i.e. areas within Ryedale will create new habitat suitable for water vole and otter.

Strensall Common Special Area of Conservation and Site of Special Scientific Interest:

3.6 The EIA recommends pollution prevention measures to be detailed in the EAP/CEMP, to be implemented on the site to avoid indirect risk of materials entering the watercourses which flow through the SAC/SSSI. There is however no mention of this as a potential impact in the HRA work, which states no specific avoidance or mitigation measures have been proposed in relation to Strensall Common SAC.



3.7 Both the EIA and the hydrology report supporting HRA recommend groundwater monitoring wells to be installed within the SSSI prior to embankment placement to provide site-specific data on potential variations in groundwater levels over time under natural conditions as best practice, but specifically not as a mitigation measure.

3.8 A CEMP and groundwater monitoring should be secured through a planning condition. The groundwater monitoring will require consent from Natural England and the land owners (MOD and/or Yorkshire Wildlife Trust) so it would be helpful if the EA could confirm if this is deliverable prior to determination.

### Design, Conservation and Sustainable Development (Landscape)

3.9 Despite the size of the scheme, don't have much to say on it since the EA have arrived at a considered and detailed scheme for an apparently essential piece of infrastructure.

3.10 Naturally the flood bank is going to alter the open vista, looking across the landscape from the footbridge at the southern end of the site where the Ebor Way and the Centenary Way meet at the river Foss, by way of an artificial interruption to the open wet grassland. It would also block out the lower portions of parts of the existing open vista across the valley bottom and over to Flaxton, West Lilling and Sheriff Hutton; although it would screen much of the less attractive giant sheds at East Lilling House. Similarly the bund will be an additional man-formed feature in the landscape looking south, southeast from the Ebor Way just before the land starts to fall away where the path meets the existing woodland.

3.11 If understood correctly, it is only the most southerly curve of the concrete spillway that would be exposed to the public right of way network. The biggest visual impact would be looking along the length of the concrete spillway when entering the application site on the Ebor Way where it crosses Black Dike; and approaching the site on the Centenary Way. The inside of the flood bank - which would be the greatest length of exposed bank - would be earth, and fully greened up so there would be no impact from the Ebor Way in that respect. Can't see any other option than seeded grasscrete. The scattering of trees along the west bank of the river Foss will pick out the line of the river in the landscape which will be an appealing addition to the scenery, and also draw attention away from the new flood bank.

3.12 No comment to make on the Landscape Masterplan and Landscape Area A, which look fine. Some queries over the planting schedule but as this is indicative can be dealt with via condition.

### Design, Conservation and Sustainable Development (Archaeology)

3.13 A series of test pits and boreholes were monitored archaeologically in 2018. Nothing of archaeological significance was noted. This was followed by a geophysical survey in 2019 which suggested that the area had undergone significant land management. One palaeochannel was also recorded.

3.14 15 evaluation trenches were excavated (3 within the CYC boundary to investigate the embankment area) in December 2019. This was meant to be accompanied by an archaeological and geo-archaeological borehole survey but this had to be postponed until January 2020. The evaluation trenches revealed a small number of archaeological features, totalling six undated linear features and a single pit. These were largely outside of the CYC boundary and are not thought to indicate settlement activity on the site – rather land management and agricultural use. Machine excavated trial pits within the evaluation trenches close to the River Foss produced evidence of organic deposits (within 2 of the 3 York trenches) beneath the uppermost natural geological deposits. These deposits were sampled and will be further analysed in the final report.

3.15 The NYCC archaeologist and CYC Archaeologist have agreed that there is sufficient archaeological information for the application to be determined without the final report on the evaluation and borehole survey being completed. Given the results of the archaeological investigation the City Archaeologist does not anticipate any further archaeological work to be required in relation to the York application. The environmental sampling results with a revised evaluation report incorporating the results of the borehole survey is still required and forms part of the condition.

### Forward Planning

3.16 Response provided regarding the Draft Joint Minerals and Waste Plan. Comments incorporated into minerals and waste consideration (section 5 of report).

### Public Protection

3.17 Conditions recommended to cover hours of work, unexpected contamination, implementation of the environmental management plan/environmental action plan and a construction environmental management plan (CEMP).

### Highways Network Management

3.18 In view of the changes to the Transport Statement to reflect that the revised construction programme and methodology results in no imported clay fill being required and the applicant's acceptance of the imposition of a pre-commencement planning condition on any permission granted requiring the applicant to submit to the local planning authority a full CTMP, CYC Highways Development Control have no objection to the application, provided that the (CTMP) condition is attached to the permission.

### Public Rights of Way (PROW)

3.19 Public Footpath, Strensall No 16 runs through the planning application boundary area. The footpath runs to the east of Walbutts, then northwards across Black Dyke and then over the River Foss. The proposal does not appear to worsen the likelihood of the path being flooded. PROW therefore do not have any objections.

## EXTERNAL

### Strensall Parish Council

3.20 The Parish Council has no objections, in principle, subject to the response from the F.I.D.B. (Foss Internal Drainage Board).

### Environment Agency

3.21 Flood Risk: EA Flood Map for Planning shows the site lies within Flood Zone 2 and 3, the medium and high probability zones. We have reviewed the FRA and provided the proposed works are carried out in accordance with the submitted FRA then we have no objections in this regard. Proposed development will only meet the requirements of the National Planning Policy Framework if the development is carried out in accordance with this FRA and it is listed as an approved plan/document in any permission granted.

3.22 It is noted that the EA / York Flood Alleviation Scheme Team are to engage with City of York Council's Emergency Planners, and the Local Resilience Forum, in order to update the appropriate existing emergency plans with the relevant information regarding the works. Land Drainage Act consent will likely be required from the IDB for any works that impact on ordinary watercourses. A Flood Risk Activity Permit will also likely be required for the earthworks that are to be undertaken within the floodplain.

3.23 Water Framework Directive/Ecology: The proposed development involves additional physical modification of the River Foss and Black Dike (The Syke) water bodies. The creation of an embankment and control structure over the River Foss, along with associated hard bed and bank protection, will result in a direct loss of channel habitat.

3.24 Changes to the natural hydrology, as a result of the operation of the proposed control structure, have the potential to impact upon sediment transport processes and therefore habitat availability within the River Foss. Also the proposed realignment of Black Dike represents a further physical modification of the water environment.

3.25 The Humber River Basin Management Plan (RBMP) requires the protection, restoration and enhancement of water bodies to prevent deterioration and promote their recovery. Without appropriate provision of mitigation and/or compensatory habitat, the physical modifications associated with the proposed development could have an unacceptable impact on the biological quality elements and therefore the overall Water Framework Directive (WFD) status of the Foss from Farlington Beck to the Syke (GB104027063540) and Syke from Source to River Foss (GB104027063530) water bodies. This, in turn, could prevent the water bodies achieving their WFD objectives. Conditions required to make development acceptable with regard to WFD and ecology.

3.26 Pollution Control: Construction activities have the potential to cause pollution or impact on the banks of the watercourse and the quality of the water. No objection, however wish to be consulted when the CEMP is submitted.

Natural England

3.27 Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on designated sites and has no objection.

3.28 Natural England agrees with the overall conclusion of the HRA (that there are no impacts to Strensall Common SAC) and has no objection to the proposal and welcome the amendments to the shadow Habitats Regulations Assessment (February 2020). Welcome the changes to the scheme design to ensure that a biodiversity net gain is achieved in each of the biodiversity units.

Regarding Strensall Common SSSI:

3.29 Based on the plans submitted, Natural England considers that the proposed development will not damage or destroy the interest features for which the site has been notified and has no objection.

Soils, Land Quality and Reclamation: No objection (response received October 2020 in response to ES addendum chapter)

3.30 Two of the proposed borrow pits (T1 & T2) are to be returned to an agricultural use. These areas are covered by the detailed assessment and currently comprise 4.95ha of which 2.57ha is best and most versatile agricultural land. It is our opinion that these areas fall under schedule 5 of the Town and Country Planning Act 1990 (as amended). As such, should secure an aftercare scheme as part of a planning condition

3.31 Appendix F provides information on the extent of each area affected by the development. This suggests that 107.33 ha is directly impacted by the development. Appendix F indicates that this comprises a permanent loss of 19.4 ha of agricultural land. This is made up of the embankment footprint (9.1ha), the borrow pits (P1 and P2) returned to a wildlife use (6.35ha), access tracks and other land uses (3.95ha). It assumes that the borrow pits being restored (T1 and T2) covering an additional 4.95ha are a temporary loss of agricultural land as these are proposed to be returned to agricultural use. In some locations where a temporary loss has been identified, such as the proposed reinstated borrow pits, there is the potential for a loss of agricultural land quality to occur if the land is not restored to high standards. Other agricultural land impacts are mainly the result of additional flood risk (73ha), which give a total (termed temporary loss) of 87.93 ha.

3.32 28.15ha of agricultural land has been surveyed in detail by the applicants to provide more definitive information about the agricultural land grade and soil resources present; this is for those areas ('the survey area') where a permanent loss of agricultural land is proposed or where the use is assumed to be temporary but where significant soil disturbance by construction activities is anticipated. Table 2.6 indicates within this area, there is 13.11ha (47%) of best and most versatile agricultural land, comprising 3.75ha (13%) Grade 2 and 9.46ha (34%) Subgrade 3a. Subgrade 3b is mapped for 14.36ha (51%) with non-agricultural land comprising 0.58ha (2%) of the survey area. By way of comparison, the % of BMV land affected (47%) is slightly more than the estimated national proportion for England (42%), reflecting the overall high quality of agricultural land in this part of Yorkshire. The detailed ALC survey findings appear consistent with the mapped soil types and other detailed ALC surveys carried out in the locality.

3.33 The remaining part of the application area (123.73 ha) has not been subject to a detailed ALC and soils assessment. This is the area where the additional flood risk is the main consideration. For this area the applicants have used grading information from the published provisional ALC map as a baseline; this shows ALC Grades 2 and 3 land. Whilst use of the provisional mapping is not ideal given the limitations of this broad-brush mapping, for the purposes of solely assessing the impact of increased flooding, a worst case scenario has been adopted by the applicants. This assumes that all the Grade 3 land is Subgrade 3a. This approach is conservative, as evidence suggests a more mixed distribution of ALC grades with areas of lower quality land likely, given the soil types present.

3.34 The findings of the flood risk assessment are described under the heading of 'Operational Impacts' and in Appendix D which provides the applicants earlier response to Natural England's representations. Increased flooding is estimated to impact on 73ha of land as described in Appendix F; of this area about 39.9ha is estimated to be flooded during a 1 in 10 year flood event which is frequent enough to be a potential limitation in the ALC system. The impact of the flood modelling is summarised in Table 2.13. Based on the information provided it seems likely that the impact of increased flooding will have a minimal impact on the existing agricultural land classification grades (all assumed as a worst case to be grades 2 and 3a) due to the predicted frequency and short duration of these events, but that there may be some increased risk of waterlogging on an occasional basis affecting soil wetness and workability which could adversely impact on yield, crop quality or field operations at those times. On the basis of the ALC grading criteria

(MAFF,1988) and the evidence provided, this level of flood risk would be insufficient to alter the likely grading at this location.

3.35 Two of the proposed borrow pits are to be returned to an agricultural use. These areas are covered by the detailed ALC assessment and currently comprise 4.95 ha of which about half is (2.57 ha) is best and most versatile agricultural land. Subject to conditions to undertake a suitable soil handling and restoration scheme which safeguards soil resources, and an appropriate aftercare scheme, in time it should be possible to return this land back to an equivalent quality.

Mineral considerations (i.e. borrow pits restored to agricultural use). Response received June 2020

3.36 To ensure the reclamation proposals meet the requirements for sustainable minerals development, the proposals should be carefully considered against guidance.

3.37 Conditions to safeguard soil resources and achieve a satisfactory standard of agricultural reclamation are recommended.

For the wider scheme:

3.38 It is recognised that a proportion of the agricultural land affected by the development will remain undeveloped. In order to retain the long term potential of this land and to safeguard soil resources as part of the overall sustainability of the whole development, it is important that the soil is able to retain as many of its many important functions and services (ecosystem services) as possible through careful soil management. Consequently, advise that if the development proceeds, the developer uses an appropriately experienced soil specialist to advise on, and supervise, soil handling, including identifying when soils are dry enough to be handled and how to make the best use of the different soils on site.

#### Yorkshire Wildlife Trust

3.39 Yorkshire Wildlife Trust has a reserve at Strensall which is less than 200 metres from the proposed flood storage area. The Trust's reserve also forms part of the Strensall Common SSSI and SAC which is designated for H4010 Northern

Atlantic wet heaths with *Erica tetralix*, and H4030 European dry heaths. The SSSI designation also mentions the entomological interest of the site.

3.40 The Foss catchment is nationally and regionally important for two protected species, water vole and white clawed crayfish. The Foss catchment is relatively isolated from other waterbodies so there may also be better possibilities for controlling invasive species if a whole catchment approach is taken. The Foss flood storage project therefore provides a major opportunity to join up habitat and in the process enhance biodiversity, protect species such as water vole and white clawed crayfish, reduce flooding, and reduce siltation. This would provide opportunities to increase biodiversity and support government policy and the conclusions of Making Space for Nature.

3.41 The authority needs to be confident of the conclusions of the HRA done by the applicants, which concludes no significant impact on Strensall Common SAC, in particular confidence on the lack of impact on the groundwater regime. The Trust would fully support the comments and concerns of NYCC (Ecology) on the application.

3.42 The proposed flood storage scheme has the potential to provide good habitat for wildlife but the Trust has a number of concerns about the habitats proposed and future management of the wildlife areas.

3.43 Further comments:

- would like confirmation that movement of wildlife will not be impacted by the control structure
- potential for the accumulation of organic pollutants from pig farms
- Concern over invasive species such as Himalayan Balsam
- management plan long term consideration
- Foss and Black Dike have been artificially straightened and managed in the past. The Trust would recommend that re-naturalising rather than re-profiling of water bodies is carried out.
- Will agreements be reached with the IDB on best practise management for wildlife?
- Comments regarding field buffers
- Supports the creation of new habitats, and the permanent borrow pits will be valuable new ponds. Further consideration for wading birds, siltation and water quality



- Tree planting more appropriate along the River Foss.
- Wet grassland would be better away from the access
- Water vole mitigation needs further consideration

### Foss Internal Drainage Board updated response 19<sup>th</sup> March 2020

3.44 The Board's maintained watercourses Black Dyke, Lilling Lane Dyke, along with the River Foss will be impacted by this work, which are all known to be subject to high flows during storm events. This proposal clearly has implications to the Board and its future activities but the Board understands from the options considered and the hydraulic constraints of the River Foss why storage and flow control at this location is being proposed - to endeavour to reduce flood risk to the communities downstream of the structure.

3.45 In these circumstances the scheme and its implications on the rural community are clearly going to be remote from the urban benefits achieved. The Board is clearly concerned about these works in the future and how they will be maintained in tandem with the existing drainage system which the Board chooses to exercise its permissive powers under the Land Drainage Act 1991.

3.46 The Board has reviewed the additional information provided by the applicant and many of the concerns remain. The Board does not consider that all of these issues are so relevant to planning that they would stop planning permission being granted. The Board believes the outstanding concerns could be addressed by appropriate planning conditions being applied rather than delaying approval of the scheme.

3.47 Reviewing the structure conceptual design area to be flooded, embankments and flow control and ancillary works associated with the scheme as a result of the works – for example, access roads, road raising, car parks etc.

- Concerns over future maintenance
- welcomes any changes to improve bank stability with slackened bank gradients. However do not know overall if the Boards machine will have adequate reach to maintain the watercourse.
- The Board accepts the ability highlighted the design of control structure includes some flexibility in the orifice design to allow for future 'fine tuning' of orifice size (if acceptable downstream and upstream) to account for any

differences observed between theoretical and actual scheme performance or flow conditions.

- concerned about modifications to the existing drainage system of 'ordinary watercourses' and the creation of new assets on privately owned land in its District with this scheme. In particular as the River Foss is not to become en-mained as 'Main River'. This results in the benefits of the work being remote from the scheme being considered. It is the Boards view this is not adequately explained. The situation being further complicated that some of the proposed assets will be considered (possibly designated) as part of a reservoir structure under the Reservoirs Act 1975 (as amended by the Flood and Water Management Act 2010)
- Concerns over ownership responsibilities and allocation of powers and funding. The issue with remote 'main river' benefits concerns riparian ownership. This also being complicated by the responsibilities of the Reservoirs Act 1991 along with the Floods and Water Management Act 2010. In view of this the Board considers the Planning Authority needs to satisfy itself that the scheme promoters will be effectively funding, operating, and maintaining the scheme for its design life. The Board would ask that these matters are addressed through a preconstruction planning condition to define the scheme promotor's responsibilities, land owners responsibilities and establish individual asset designations. This being used to confirm which powers can be applied to operate maintain and replace in the future. To further identify any outstanding operational, maintenance and replacement work which will not be done on 'ordinary watercourses' within the development area that the Board may have to consider funding in the future.
- Access arrangements are put in place for design life.
- Concerns over future ability of Environment Agency to fund non main river assets
- The Board is concerned that these are adequately maintained in the future and included in the Board's request for planning conditions.

### Kyle and Upper Ouse Drainage Board

3.48 No response received.

### Yorkshire Water

3.49 There are no public assets (sewers or water mains) recorded within the red line boundary. Based on the information submitted, no observation comments are required from Yorkshire Water.

#### Canal and Rivers Trust

3.50 Outside of consultation area. No comments.

#### York Ramblers Society

3.51 Support the raising of Ings Lane to over 19m OD where it crosses the Foss. Disappointed that there is no provision for temporary, or permanent, facilities for diversion of the footpath around the 19m OD line in the event of any flooding in this area. (Officer note – this part of the site is in Ryedale).

### **4.0 REPRESENTATIONS**

4.1 The application has been advertised by neighbour notification, press notice and site notice.

4.2 22 objections were received from members of the public (some of these were from the same members of the public making repeated representations) and from the National Farmer's Union.

4.3 The issues raised in the objections are summarised below.

#### National Farmer's Union (summarised)

- Understand the need to protect people and property, feel the significant loss of agricultural land (approx. 130 hectares) and potential damage to local farming businesses
- fly tipping
- How will compensatory biodiversity sites be secured?
- Clarification over area to be flooded/river flow
- Concern over borrow pits in terms of soil, security and maintenance
- Applicant states that permanent loss of agricultural land is 18.87 ha, whereas 121 hectares would be flooded and the fact it is grade 2 agricultural land with harm to crops from more frequent flooding and financial implications

- Notes omissions in policies in the planning statement such as land management, food production, rural enterprise, agricultural land and flood storage
- What will happen to imported material that does not meet specification?
- Has the land to be re-profiled been acquired?
- Query regarding compensation and ability to deliver habitat
- Lack of detail regarding eradication programme for Himalayan Balsam and Giant Hogweed
- Question how proposed net biodiversity gain will relate to the biodiversity loss and loss of agricultural land
- Clarification over IDB responsibilities
- Feel full agricultural land assessment required
- Query apparent discrepancy of figures for water storage area
- Would like to see EA added as responsible party for the temporary land works and the CEMP
- Would like to see agricultural land access included in the action to minimise impact on transport routes
- Concern over detail on landscape masterplan

4.4 A summary of the representations from members of the public raising the following concerns.

#### Impact on agricultural land

- In principle supportive of the scheme to flood low lying farmland instead of homes when there is no alternative however the proposal will seriously compromise business and livelihood
- Concerns over impact on ability of land to be farmed. A significant area no longer be suitable for cropping
- Compensation concerns
- Attitude of EA has led to objection, not right that a handful of Ryedale businesses should pay the price for it.
- Home and livestock at risk
- Loss of 28.5 acres field for cropping, client has no livestock
- If right to flood land is grassed, there is implications for fencing to make land stock proof
- Flooded land will not sustain grazing horses or land for making hay
- Stables likely to become redundant

- Lots of food is imported to this country, question over quality and also the carbon footprint
- Loss of value to property, business and livelihood

### Impact on drainage and flood risk

- Restriction to Foss will result in water backing up the river and flooding and waterlogging the farmland. Knock on effect in extreme events for nearby drains and ditches
- Will render previous private drainage investment worthless
- Questioning EA predictions regarding the impact of the proposals on farmers just outside the area. Even if predictions are true, then even the short periods of flooding can make the difference of life and death for a crop. The land affected has a high clay content and water which is only suitable for autumn cropping which would be affected.
- Flood water now coming onto our land flooding and flooding our pond (Lilling Green Farm). Existing residential and equestrian small holding with cattery, holiday cottage, buildings offering livery use. If owners chose to sell, likely to be a loss of value up to 50% and may not be able to operate their businesses.
- Lack of consultation
- Does not adequately address issues upstream of proposed works
- EA have not provided compensation figures in terms of ownership of dam structure and how right to flood will work
- EA based flood models on 2007 which was an exceptionally wet year
- Plans constantly changing, uncomfortable as to accuracy of their plans
- Whole drainage system could be compromised
- Query ownership of slow the flow dam structure
- Impact of proposal on ability to plan for future, given unknowns
- Impact on wellbeing
- Reports ignore wider implications on relatively flat Foss river basin
- If normal flow restricted due to scheme, self-evident that water levels rise upstream
- Time and expense of drainage improvement already carried out will be severely harmed by works
- Future maintenance and responsibility not assured which could have severe flooding consequences
- Until scheme fully built and functioning alleged effects are unproven
- Work of EA and modelling software may be wrong
- Interests of the few being sacrificed for the benefits of the many

- Measures such as regular maintenance are tried and tested but are unfashionable compared to large schemes
- Breach scenarios of dam not considered.
- Red line boundary correction
- Embankment should be raised to prevent spillage onto paddock, pond should be protected

## Highways

- BT junction box on road that will flood
- Maintain access during construction
- Concerns over routing of traffic through West Lilling

4.5 3 letters of support were received from members of the public and a further two responses of support on behalf of the River Foss Society.

- Necessary to reduce risk of future flooding along Huntington Road north of Monk Bridge.
- Perfect solution to sudden torrent of rainwater
- Resident of Strensall living close to Foss, fully support proposal
- The River Foss Society fully supports this project, however, on its completion would like to see a public viewing area closer to the project to allow for bird watching and viewing other wildlife activity.

4.6 Following the initial consultation that commenced in December 2019, the Environment Agency, as the applicants provided responses to these. These consultation responses are available to view in full on Public Access. A number of the responses made reference to compensation caused by the impact of the works. This is not a material planning consideration, however for information the Environment Agency did provide an explanatory note regarding landowner compensation under the Water Resources Act 1991.

4.7 Following the submission of further information relating to the Environmental Statement, the application was re-advertised by way of neighbour notification, press and site notice in February/March 2020

4.8 A second objection was received from the National Farmer's Union raising the following points

- Note change to reprofiling of Foss from 225 metres to 1.3km. This will increase area of farmland affected
- Note there might be a small benefit to agricultural land downstream, this has no correlation with land upstream
- Inclusion of additional lower level berms into channel of the Foss will also have a significant effect and might impact on the Foss FSA Modelling Summary Note
- Increasing case for a soils and agricultural land assessment

4.9 A further consultation period was undertaken in September 2020 following the submission of an addendum to the Environmental Statement. An objection was received on 25<sup>th</sup> October raising the following concerns:

- Querying the correctness of the red line plan for the planning application
- Consider building a dam on farmland is going to increase flooding on our land during a 1 in 2 year event
- request that an independent flood risk assessment is undertaken as we do not believe the Applicants modelling is sound. The base line data that they have used for their modelling is incorrect and despite us providing the Environment Agency with evidence and the correct data to use, they have refused to change their modelling. Until the modelling is correct there is no way of truly assessing the impact of the scheme on the land and the true loss of BMV soils
- Applicant has not carried out a detailed land drainage survey
- ES addendum fails to consider impact of inundation on land
- EA cannot confirm quality of material to be used and therefore cannot confirm no materials will be brought onto the site for construction
- Querying soil sampling

4.10 The applicant has responded to the query regarding the accuracy of the red line plan. They note that “The flood extent shown in figure 5 of the supplementary statement is taken from raw unedited flood maps and has included some flooded areas not included in the original planning application or red line boundary. These areas were not included in the original submission as modelling has shown that these areas flood to the same extent for both the current ‘baseline’ scenario and the Foss FSA scheme scenario. The increased area shown is therefore not part of the operational flood storage area and as such the current red line boundary and submitted flood map is correct.”

4.11 A further objection was received on behalf of five landowners who farm land west of Sherriff Hutton Bridge Road raising the following concerns.

- Concerned following a meeting the EA provided no information the proposal would not affect their land
- Insufficient time to respond to a topographical survey
- due to level nature of Foss critical to the efficiency of the drainage and hence the productive earning capacity of each of the holdings.

## **5.0 APPRAISAL**

5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise.

5.2 The Council does not have an adopted local plan that covers the whole local authority. The statutory development plan for the area of the application site comprises the saved policies of the Yorkshire and Humber Regional Spatial Strategy (RSS) relating to the general extent of the York Green Belt, saved under The Regional Strategy for Yorkshire and Humber (Partial Revocation) Order 2013.

### **5.3 Main Issues**

- flood risk and drainage
- water environment
- impact on the natural environment
- minerals and waste
- agricultural land and soils
- impact on the character of area
- impact on amenity
- archaeology
- highways and parking
- impact on the green belt
- very special circumstances

### **FLOOD RISK**

5.4 The NPPF states in paragraph 148 that the planning system should support the transition to a low carbon future in a changing climate, taking full account of



flood risk. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience.

5.5 Paragraph 155 of the NPPF states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.

5.6 Paragraph 163 states that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Development should only be allowed in areas at risk of flooding where, in the light of the flood risk assessment it can be demonstrated that:

- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;
- b) the development is appropriately flood resistant and resilient;
- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;
- d) any residual risk can be safely managed; and
- e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan

5.7 Paragraph 165 of the NPPF goes onto to say that major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The systems used should:

- a) take account of advice from the lead local flood authority;
- b) have appropriate proposed minimum operational standards;
- c) have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development; and
- d) where possible, provide multifunctional benefits.

5.8 Paragraph 2.14 of the 2018 Draft Plan states that the plan will ensure development does not result in increased flood risk elsewhere and, where possible, achieves reductions in flood risk overall. Draft Policy ENV4 states that where flood risk is present, development will only be permitted when the local planning authority is satisfied that any flood risk within the catchment will be successfully managed (through a management and maintenance plan for the lifetime of the development) and there are details of proposed necessary mitigation measures.

5.9 The application site is within flood zone 3. National planning guidance (the NPPG) requires therefore that the sequential test be undertaken. The type of development proposed is classed as water compatible and is therefore appropriate; the exception test is not required. However the guidance states that in Flood Zone 3b (functional floodplain) water-compatible uses, should be designed and constructed to:

- remain operational and safe for users in times of flood;
- result in no net loss of floodplain storage;
- not impede water flows and not increase flood risk elsewhere.

5.10 The Sequential Test is passed on the following grounds -

- The proposed development is flood alleviation works designed to improve the level of protection to buildings downstream
- The works are required in flood zone 3; they are location specific in order to provide better resilience to flooding and consequently pass the sequential test.

5.11 The submitted ES also considers the following matters:

- Flood risk
- Water resources and usage;
- Water quality - this is also considered in the Water Framework Directive Assessment report submitted with the planning application;

Geomorphology – this is also considered in the Geomorphology Assessment and the Water Framework Directive Assessment report.

5.12 The beneficial residual impacts to residential and commercial properties are identified through the reduction of flood risk. While residents of Lilling Green Farm, which lies in Ryedale have objected on flood risk concerns, it is noted that the Environment Agency in its role as a statutory body has not objected to the proposal on flood risk grounds.

5.13 The Foss Internal Drainage Board have noted concerns relating to the changes to the Foss and Black Dike including for matters such as maintenance and land drainage. In response the Environment Agency have included a note which states the mitigation provided by river reprofiling and also the IDB to undertake their maintenance of watercourses. In their revised response to the application in March 2020, the Foss IDB removed their objection to the application and request that

conditions be imposed to consider drainage in line with those conditions recommended by the lead local flood authorities of York and North Yorkshire.

5.14 Concerns have also been raised by farmers of affected land and residents, particularly to the north of the site of the impact the changes in how the Foss drains during flood events will have on them in terms of the impact on agricultural land and also flood risk. Conditions are proposed regarding surface water drainage and maintenance. The impact on best and most versatile agricultural land is considered later in this report at paragraph 5.44. With regard to matters such as compensation, the Environment Agency have noted that “The Water Resources Act 1991 (Schedules 20 and 21) contains a process whereby anyone who suffers loss or damage as a result of the Agency entering on to land to carry out works, or the carrying out of such works, can claim compensation.” The compensation process is entirely separate from the determination of any planning application and is not a material planning consideration.

5.15 Objections have been raised of the drainage and flood risk implications wider than the application site that would have an impact on agricultural land. In their response to objections, the applicant noted in response that for the land upstream of the post development 1:100 year plus climate change flood extent the applicant’s assessment is that there will not be a material impact on land use. (supplementary statement dated 7<sup>th</sup> Feb 2020).

5.16 Furthermore, the flood risk modelling note submitted by the Environment Agency (February 2020) explains that:

“For small magnitude flood events (e.g. 1 in 2 year event) the proposed Foss FSA will cause water to spill out on to the left flood plain as planned. The impact of raised water levels diminishes the further upstream you go in the River Foss. From Lilling Green Dyke outfall and upstream, the impact of the proposed scheme is relatively minor and only slight increases in the duration of which land drains would be locked are expected. It is only for the larger flood events, like the 1 in 10 year event and greater, that impoundment starts to cause widespread out of bank flooding upstream in the FSA. The elevated water levels also lock the land drains for longer. However, even for the 1 in 100 year plus climate change event, the increased locking of land drains is only for a relatively short period of time. The maximum is an additional 35hrs immediately upstream of the control structure reducing to 20hrs at Ings Lane. The reason for this limited impact is the large diameter of the control structure

orifice and the fact that the FSA can discharge from full to empty in approximately 35 hours.”

5.17 The proposed development does include approximately 0.5 hectares of additional impermeable hardstanding and concerns have been raised over the impact of surface water run off as a result of the proposal. Due to this, a surface water drainage strategy is required to deal with surface water run-off. The Lead Local Flood Authority and the Foss Internal Drainage Board have requested a planning condition to include a surface water drainage strategy be agreed and for it to meet sustainable drainage guidance as well as a condition to include drainage maintenance.

5.18 It is also noted that some objectors recognise that the existing farmland already has drainage issues and indeed have made reference to remedial land drainage works they have undertaken in recent years indicting the existing drainage issues for the land. There has been a query of using data from 2007, given water levels at this time, however this is not unreasonable as it captured water levels during an extreme event.

5.19 The proposed development will reduce flooding downstream, providing great public benefits in the form of the flood protection for 490 properties, 465 of which are residential. Subject to appropriate conditions, the proposal is acceptable on drainage and flood risk grounds.

## WATER ENVIRONMENT

5.20 The EU Water Framework Directive establishes a framework for the protection of water bodies, including surface water bodies such as rivers. The baseline condition of all water bodies in England was presented in 2009 in River Management Basin Plans. The aim is for all waterbodies to be achieving good status.

5.21 Paragraph 170 e) of the NPPF states that planning decisions should contribute and enhance the natural and local environment by wherever possible helping to improve local environmental conditions, such as water quality, taking into account relevant information such as river basin management plans.

5.22 The 2018 Draft Plan, sets out that the plan seeks to safeguard water resources and to protect and improve water quality with an overall aim of getting

water bodies to 'good' status under the Water Framework Directive (para 2.14). Policy DP2 of the 2018 Draft Plan states that development will help conserve and enhance the environment through maintaining water quality in the River Foss.

5.23 Within the Environmental Statement, the impact on the water environment is considered. In addition to flood risk, this includes:

- water resources and usage
- water quality
- geomorphology

5.24 The River Foss and Black Dike (or Syke) are subject to legislative protection including through the Water Framework Directive (WFD). The current status of these waterbodies is 'moderate' for the Foss and 'moderate' for Black Dike. The ES sets out that without mitigation the construction and operational periods could result in some medium adverse impacts on the water environment and that the significance of this would be moderate. Therefore mitigation is proposed in the form of a Construction and Environmental Management Plan to be secured by planning condition to cover the construction impacts. A number of measures are proposed to deal with the operational impacts including measures such as improvements to the profile of the Foss banks, realignment of Black Dike, the design of the control structure and provision of ponds. The Environmental Statement concludes that subject to the mitigation measures, the residual effects to the water environment will not be significant with the exception of the impact on agricultural land and also the aforementioned benefits to properties in terms of flood protection. The Council's Ecologist had recommended a ground water monitoring condition be imposed if permission is granted on Strensall Common. However, the HRA advised that ground water monitoring is not required on Strensall Common as there is no adverse impact shown to the SAC itself but recommended monitoring by the application site itself. The applicant has confirmed they will undertake this and the results will be shared with the local planning authority. A condition for this is to be imposed.

## ECOLOGY

5.25 Section 15 of the NPPF sets out that planning decisions should contribute to and enhance the natural and local environment. This includes by protecting and enhancing sites of biodiversity. Paragraph 175 advises that when determining applications the following principles should be applied.

a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;

b) development on land within or outside a Site of Special Scientific Interest (SSSI), and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest.

5.26 Para 177 goes on to say that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

5.27 Policy GI1 of the 2018 Draft Plan states York's landscapes, geodiversity, biodiversity and natural environment will be conserved and enhanced recognising the multifunctional role of green infrastructure in supporting healthy communities, cultural value, a buoyant economy and aiding resilience to climate change.

5.28 Policy GI2 states that in order to conserve and enhance York's biodiversity, any development should where appropriate:

II. ensure the retention, enhancement and appropriate management of features of geological, or biological interest, and further the aims of the current Biodiversity Audit and Local Biodiversity Action Plan

III. take account of the potential need for buffer zones around wildlife and biodiversity sites, to ensure the integrity of the site's interest is retained;

iv. result in net gain to, and help to improve, biodiversity;

v. enhance accessibility to York's biodiversity resource where this would not compromise their ecological value, affect sensitive sites or be detrimental to drainage systems;

vi. maintain and enhance the rivers, banks, floodplains and settings of the River Foss, and other smaller waterways for their biodiversity, cultural and

historic landscapes, as well as recreational activities where this does not have a detrimental impact on the nature conservation value;

vii. maintain quality in the Foss to protect the aquatic environment, the interface between land and river, and continue to provide a viable route for migrating fish.

5.29 Policy GI3 states “in order to protect and enhance York’s green infrastructure networks any development should where relevant:

- I. maintain and enhance the integrity and management of York’s green infrastructure network, including its green corridors and open spaces;
- II. protect and enhance the amenity, experience and surrounding biodiversity value of existing rights of way, national trails and open access land;
- III. ensure the protection of the hierarchy and integrity of York’s local, district and regional green corridors”

5.30 The proposed development lies upstream of Strensall Common which is designated as a SSSI and SAC. Given this, the application is EIA development due to the potential likely significant impacts on Strensall Common and has an accompanying Environmental Statement (ES) with an addendum published in February 2020 following the consultation response of Natural England which requested further information. The ES and addendum have been considered by Ecology officers for both North Yorkshire County Council and City of York Council, the Environment Agency (in their role as a statutory consultee) and also by Natural England.

5.31 With regard to the designated sites of Strensall Common the ES states there will be no significant effects on the SAC based on the groundwater and fluvial modelling. Following on from this, the ES addendum concluded that there would be ‘no likely significant effects’ to Strensall Common.

5.32 Further to consideration of the designated sites, the ES identified habitats of principal importance including rivers, lowland mixed deciduous woodland and hedgerows. Other habitats include arable agricultural fields, semi-improved grassland, bank/riverside vegetation, ponds, tall ruderal vegetation and scattered scrub.

5.33 Identified protected or notable species identified are water voles, otter, bat species (foraging/commuting), potential bat roost in tree in borrow pit location, a

range of farmland birds (including grey partridge, skylark, tree sparrow, yellow wagtail, linnet, corn bunting, yellow hammer and reed bunting). The application site lies within a green infrastructure corridor (figure 3.2 of the 2018 Draft Plan).

5.34 The City of York Council's Ecologist advised that the ecological impacts in York are;

- ☐ River Foss temporary diversion channel – impact on water vole burrows.
- ☐ Flow control structure – impact on water vole burrows and movement of fish/eel
- ☐ Temporary river crossing – potential impact on water vole.
- ☐ River Foss re-profiling – potential impact on water vole
- ☐ Re-alignment of Black Dike – potential otter holt identified here
- ☐ Proposed wetland grassland mix.

5.35 The applicant has submitted a Biodiversity Impact Calculator Report using the DEFRA Biodiversity metric 2.0. This does not cover the designated sites such as Strensall Common or irreplaceable habitat impacts. The assessment concludes that there will be 10.84% net gain for habitat units, 11.91% net gain for hedgerow units and 1.22% net gain for river units.

5.36 With regard to water voles and otter holts a pre-construction survey is proposed to be secured by condition. The scheme will result in new habitat suitable for water voles and otters in the Ryedale area. A condition is also recommended with regard to fish easement within the control structure and the creation of the wet grassland.

5.37 The impact on nesting birds lies within the Ryedale area, linked to the creation of borrow pits. As such, a condition solely on land outside of York is not considered to meet the test of enforceability and it is for Ryedale to impose a condition.

5.38 The proposal is considered to be acceptable with regard to the impact on the designated sites at Strensall Common. The other impacts on the natural environment are considered, subject to appropriate conditions to be acceptable. The impact on the natural environment is not considered to conflict with paragraph 175 of the NPPF. It is also noted that Natural England, the Environment Agency and the local authority ecologists have no objections to the proposal.

## MINERALS AND WASTE



5.39 Paragraph 206 of the NPPF states that local planning authorities should not normally permit other development proposals in Mineral Safeguarding Areas if it might constrain potential future use for mineral working. There are surface minerals across the application site including sand and gravel but the site is not allocated in the 2016 Draft JMWP for extraction of sand and gravel.. The 2016 Draft JWMP also indicates that there are deposits of clay within the NYCC and City of York area, although the extraction of clay in York for bricks has not been undertaken for approximately 50 years. Policy S01 seeks to safeguard mineral resources against surface development.

5.40 Policy S02 states that “within surface minerals safeguarding areas... permission for development other than minerals extraction will be granted where:

- i) It would not sterilise the mineral or prejudice future extraction; or
- ii) The mineral will be extracted prior to the development (where this can be achieved without unacceptable impact on the environment or local communities), or
- iii) The need for the non-mineral development can be demonstrated to outweigh the need to safeguard the mineral; or
- iv) It can be demonstrated that the mineral in the location concerned is no longer of any potential value as it does not represent an economically viable and therefore exploitable resource; or
- v) The non-mineral development is of a temporary nature that does not inhibit extraction within the timescale that the mineral is likely to be needed; or
- vi) It constitutes ‘exempt’ development (as defined in the Safeguarding Exemption Criteria list).”

5.41 Policy MI3 seeks continuity of supply of clay. The draft minerals and waste policies should be applied with moderate weight.

5.42 The Minerals Planning Practice Guidance states that with regard to industrial minerals such as clay, authorities should recognise that there are marked differences in geology, physical and chemical properties, markets and supply and demand between different industrial minerals, which can have different implications for their extraction.

5.43 The proposed development is in essence a substantial engineering operation with the digging out of clay from borrow pits on the site and the use of the clay to form the bunding. The EA indicate that there is likely to be required an import of clay of approximately 2100 cubic metres to make up for a shortfall of clay of the necessary quality from the borrowpits. The use of borrowpits reduces the

requirement for bringing further clay onto the site. It is material that the creation of the bunding in York is likely to prevent future extraction of resources under the site of the bund from use and that the depositing of this material from outside of the site may also have an impact on the quality of this underground resource. The ES (Section 7.7) has considered the impact of the proposed development with regard to the impact on mineral resources and concludes that there will be a slight adverse impact on minerals resources that cannot be mitigated. However, only relatively small areas below the footprint of the embankment and the borrow pits are likely to remain inaccessible for future uses. Furthermore the mineral below the footprint of the embankment will be extracted and utilised in the construction process. Given this and the wider benefits of the proposal, the development is considered to comply with draft mineral policy S02 and generally with paragraph 206 of the NPPF given the only minimal loss of resource on site and its utilisation in the construction of the scheme.

5.44 Natural England have no objection to the proposal with regard to the mineral considerations but note that aftercare and restoration are important considerations, and a condition is recommended to require a soil restoration statement.

## AGRICULTURAL LAND

5.45 In accordance with paragraph 170b) of the NPPF decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile (BMV) agricultural land. Para 118 states that planning decisions should recognise that some undeveloped land can perform many functions such as for wildlife, flood risk mitigation or food production. Policy D12 of the 2016 JMWP is of some relevance and is applied with moderate weight. The policy states that with regard to minerals and waste development that the best and most versatile agricultural land will be protected from unnecessary and irreversible loss. Where development of BMV agricultural land is justified proposals should prioritise the protection and enhancement of soils and the long term potential to recreate areas of BMV land. Where relevant, development will be subject to aftercare requirements to ensure that a high standard of agricultural restoration can be achieved.

5.46 Agricultural land quality is classified (ALC) on the following scale with BMV land is graded from 1 to 3a.

Grade 1 – excellent quality agricultural land  
Grade 2 – very good quality agricultural land  
Grade 3 – good to moderate quality agricultural land  
Subgrade 3a – good quality agricultural land  
Subgrade 3b – moderate quality agricultural land  
Grade 4 – poor quality agricultural land  
Grade 5 – very poor quality agricultural land

5.47 Following concerns raised by objectors with regard to the impact on agricultural land a further addendum chapter to the ES covering agricultural land and soils was submitted in September 2020 and subject to consultation.

5.48 The ES addendum chapter sets out that the development will result in a substantial adverse effect on agricultural land, including the permanent loss of 19.4 hectares of agricultural land (appendix F). Section 4 notes the permanent loss of 9.07ha of BMV land (7.55ha of Subgrade 3a land combined with the 1.52ha of Grade 2 land). However, this total loss will be mitigated through the use of BMV topsoil from permanent areas of loss of the development to reinstate areas of lower quality soil, within the temporary borrow pits (located in Ryedale). Thereby offsetting some of the total loss of BMV land. The scheme will have a moderate adverse effect on BMV within the footprint of the FSA. However, this will not result in it falling within a lower ALC grade and therefore not cause any additional permanent loss of BMV land.

5.49 Natural England have considered the ES addendum on agricultural land and soil quality. Increased flooding is estimated to impact on 73ha of land as described in Appendix F; of this area about 39.9ha is estimated to be flooded during a 1 in 10 year flood event. Natural England go on to note that “based on the information provided it seems likely that the impact of increased flooding will have a minimal impact on the existing agricultural land classification grades (all assumed as a worst case to be grades 2 and 3a) due to the predicted frequency and short duration of these events, but that there may be some increased risk of waterlogging on an occasional basis affecting soil wetness and workability which could adversely impact on yield, crop quality or field operations at those times. On the basis of the ALC grading criteria (MAFF, 1988) and the evidence provided, this level of flood risk would be insufficient to alter the likely grading at this location”. Natural England have no objection with regard to the impact on soils and agricultural land subject to condition.

5.50 Furthermore the EA have noted that there will be benefits to approximately 22 hectares of agricultural land, some of which may be BMV land grade 3a, much of which is in the York area, downstream through the proposed flood protection.

5.51 The impact on agricultural land, while contrary to paragraph 170b) of the NPPF, should also be considered in the context of paragraph 118 which highlights the 'many functions' undeveloped land can perform. The impact on agricultural land is acknowledged, including the permanent loss of over 9 hectares of BMV land, but as the applicant's submission makes clear, this should not result in an additional loss of best and most versatile soil as a result of the impact of the scheme. It is also noted that Natural England as a statutory consultee have confirmed they have no objection to the scheme on this matter.

## IMPACT ON THE CHARACTER OF THE AREA

5.52 Paragraph 127 of the NPPF says that planning decisions should ensure that developments are visually attractive as a result of effective landscaping. Paragraph 170 goes on to say that decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. Policy D1 of the 2018 Draft Plan should be applied with moderate weight and states that proposals should enhance and complement the character and appearance of landscape. Emerging Policy D2 considers landscaping and setting for design proposals. The Policy states that proposals will be supported where, amongst other things, they conserve and enhance landscape quality and character, and the public's experience of it and make a positive contribution to York's special qualities.

5.53 With regard to the development in the York boundary, the proposal will result in the construction of a bund on what is an otherwise relatively flat area of land adjacent to the River Foss. While the bunding will form a change in this existing landscape, this will be softened due to the design allowing vegetation to grow through the bunding. The realignment and reprofiling of water bodies will be relatively neutral and over time will blend into the landscape. The control structure that crosses the Foss will be more visually apparent but structures crossing waterways are a common feature even in rural areas. There is for example a footbridge in close proximity. Planting is proposed, including for trees as part of the wider scheme on the banks of the Foss facing the York boundary. Subject to appropriate planning conditions covering landscaping and planting for trees it is

considered the proposal would be visually attractive and would conserve and enhance the landscape quality.

## ARCHAEOLOGY

5.54 Section 16 of the NPPF considers the impact of development on the historic environment, including archaeology. Policy D6 of the 2018 Draft Plan is also relevant. Prior to determination of the application, archaeological work including the evaluation trenches have revealed a small number of archaeological features. The Council's Archaeologist has considered the proposal and in liaison with the North Yorkshire County Council Archaeologist considers that the proposal will be acceptable subject to condition.

## HIGHWAYS

5.55 Paragraph 108 of the NPPF states that when assessing applications for development, it should be ensured that:

- appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location
- safe and suitable access to the site can be achieved for all users; and
- any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

5.56 Para 109 goes on to say that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Policy T1 of the 2018 Draft Plan states that to provide safe, suitable and attractive access, proposals will be required to demonstrate there is safe and appropriate access to the adjacent adopted highway. Proposals should also create safe and secure layouts for motorised vehicles (including public transport vehicles), cyclists, pedestrians that minimise conflict. Policy GI3 states that any development, where relevant should protect and enhance the amenity, experience and surrounding biodiversity value of existing rights of way, national trails and open access land.

5.57 The proposed vehicular access for construction vehicles is due to be from the A64 and outside of the York boundary. There is an existing public right of way that runs across the site and this is to be restored once the construction has been

completed. Following an initial objection from North Yorkshire County Council Highways, over the number of HGVs being routed through villages in Ryedale for the importation of clay onto the site, the applicant has undertaken further work which confirms they will no longer require to import clay onto the site for the works. This has resulted in the objection being lifted subject to a construction traffic management plan condition. York's Highway Officer has no objection subject to the same condition.

## IMPACT ON AMENITY

5.58 The NPPF states that developments should create places with a high standard of amenity for all existing and future users. It goes on to state that decisions should avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development. Policies D1 and ENV2 of the 2018 Draft Plan consider amenity.

5.59 Within the York area of the application site there will be various engineering works. The site compound will be located well to the north of Strensall within Ryedale. Construction traffic will also reach the site from Ryedale.

5.60 The nearest houses to the engineering works in York will be Walbutts Farm and the Barn at Walbutts Farm, approximately 150 metres to the south west and East Lilling House, approximately 350 metres to the east. The Council's Public Protection team have suggested a condition covering a Construction and Environmental Management Plan. Given the likely length of time of the project, 2 years, and the relatively open landscape which can cause sound to carry some distance, this condition is considered necessary and reasonable to protect amenity.

## GREEN BELT

5.61 The exact boundaries of the York Green Belt are to be fixed during the Local Plan process. For the purposes of this application, the site is therefore considered to be within the general extent of the Green Belt in line with the saved policies of the revoked Yorkshire and Humber RSS which states that the local plan will define the detailed boundaries of the outstanding sections of the outer boundary of the York Green Belt about 6 miles from York city centre.

5.62 Paragraph 143 of the NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very

special circumstances. Paragraph 146 states that certain forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. This includes engineering operations.

5.63 Policy GB1 of the 2018 Draft Plan is also relevant, however only limited weight can be attached to this policy given the current stage of the Plan and the unresolved objections. Policy GB1 of the 2005 DCLP is also a material consideration, albeit with very limited weight.

5.64 The application and the surrounding area is very flat, although there are tree groupings to the north and south of the site. The creation of a substantial area of bunding measuring in places up to 3 metres in height will undoubtedly disrupt the open nature of the area and result in a reduction in visual openness, particularly when viewed from the existing public right of way that runs through the western part of the site. Furthermore the inclusion of infrastructure in the form of part of the river control structure, which will lie across the Foss, will also have a minor adverse impact on openness due to its height, scale as a new structure.

5.65 The purpose of the Green Belt in this location is considered to primarily be the safeguarding of the countryside from encroachment and help preserve the setting and character of York and its surrounding villages. The proposal is not considered to conflict with these purposes as the rural nature and character would remain. Given the loss of openness very special circumstances are required for the application to be approved.

## VERY SPECIAL CIRCUMSTANCES

5.66 As per paragraph 143 of the NPPF, inappropriate development in the green belt should not be approved except in very special circumstances. Para 144 goes on to say that any harm to the green belt is given substantial weight in the planning balance. Furthermore, very special circumstances will not exist unless the potential harm to the green belt and any other harm resulting from the proposal is clearly outweighed by other considerations.

5.67 The proposed development will result in improved flood protection of approximately 465 number of dwellings and 25 non-residential properties downstream in York. This is a benefit that is considered to carry great weight in favour of the scheme and is considered to be a very special circumstance that

clearly outweighs the identified harm to the green belt openness, best and most versatile agricultural land and mineral resources.

## **6.0 CONCLUSION**

6.1 Paragraph 11 of the NPPF states local planning authorities should approve development proposals that accord with an up-to-date development plan without delay. The proposal is for development in the green belt that is deemed to have a harmful impact on openness. As such, paragraph 143 of the NPPF states development of this kind should be refused unless there are very special circumstances to outweigh green belt harm and any other identified harm.

6.2 The harm to the openness of the York green belt is considered to be modest in scale. Further minor harm is identified in the impact on mineral resources and moderate harm is identified due to through the permanent loss of over 9 hectares of BMV agricultural land across the York and Ryedale parts of the application site.

6.3 Conversely, the benefits to the scheme include the protection to approximately 465 residential properties downstream of the application site, a further 30 commercial properties. Additionally, approximately 22 hectares of BMV agricultural land, much of which in York will receive additional flood protection. It is considered that great weight should be afforded to these significant flood protection benefits. The Environmental Statement and Biodiversity Impact Calculator also identifies there is no harm to the designated sites at Strensall Common and to biodiversity or hydrology that could not be overcome by appropriate planning conditions. Indeed, once mitigation is carried out, there are further benefits for example through the wildlife ponds and some weight is afforded to these benefits.

6.4 The impact on amenity, archaeology, drainage and the local highway network are considered to be acceptable subject to appropriate planning conditions. Weighing the proposal up in the planning balance, it is considered that very special circumstances exist; the identified benefits of flood protection are considered to clearly outweigh the identified harms. Subject to the following planning conditions, approval is recommended.



## 7.0 RECOMMENDATION: Approve

1 TIME2 Development start within three years

2 The development hereby permitted shall be carried out in accordance with the following plans and other submitted details:-

Site Location Plan:

ENV0000381C-CAA-00-00-MP-EN-C0400:9 Rev P06

General Arrangement Plan:

ENV0000381C-CAA-00-00-DR-C- I0500\_23 (Rev P02) dated 10/02/2020

Black Dike Re-Alignment Plan and Section:

ENV0000381C-CAA-00-00- DR-C- I0500\_36a (Rev P02) dated 27/01/2020

River Foss Re-Profiling South Locations:

ENV0000381C-CAA-00-00-DR-C-I0500\_41 Rev P01 dated 08/11/2019

River Foss Re-Profiling North Locations:

ENV0000381C-CAA-00-00-DR-C-I0500\_40 Rev P01 dated 08/11/2019

Flow Control Structure Sections:

ENV0000381C-CAA-00-00-DR-C-I0500\_36 Rev P01 dated 08/11/2019

Outlet Channel Plan and Section:

ENV0000381C-CAA-00-00-DR-C-I0500\_35 Rev P01 dated 08/11/2019

Inlet Channel Plan and Section:

River Foss Re-Profiling South Locations:

ENV0000381C-CAA-00-00-DR-C-I0500\_34 Rev P01 dated 08/11/2019

Flow Control Structure Plan and Sections

River Foss Re-Profiling South Locations:

ENV0000381C-CAA-00-00-DR-C-I0500\_33 Rev P01 dated 08/11/2019

Embankment Cross Sections:

ENV0000381C-CAA-00-00-DR-C-I0500\_31 Rev P01 dated 08/11/2019

Embankment Long Section:

ENV0000381C-CAA-00-00-DR-C-I0500\_30 Rev P01 dated 08/11/2019

Spillway General Arrangement:

ENV0000381C-CAA-00-00-DR-C-I0500\_29 Rev P01 dated 08/11/2019

Earthworks Borrow Pit P1 Plan and Sections:

ENV0000381C-CAA-00-00-DR-C- B1301\_22 Rev P03 dated 07/02/2020

Earthworks Borrow Pit P1 Plan and Sections:

ENV0000381C-CAA-00-00-DR-C- B1301\_23 Rev P03 dated 07/02/2020

Site Access, Compound Area and Temporary Works:

ENV0000381C-CAA-00-00-DR-C-I0500\_24 Rev P02 dated 02/12/2019

Services and Boreholes:

ENV0000381C-CAA-00-00-DR-C-I0500\_25 Rev P01 dated 08/11/2019

Landowner Access Ramp:

ENV0000381C-CAA-00-00-DR-C-I0500\_32 Rev P01 dated 08/11/2019

Landscape Masterplan:

ENV0000381C-CAA-00-00-DR-L-C0700\_36 Rev P05 dated 11/02/2020

Landscape Area A:

ENV0000381C-CAA-00-00-DR-L-C0700\_37 Rev P05 dated 11/02/2020

Landscape Area E Borrow Pit Proposals:

ENV0000381C-CAA-00-00-DR-L-C0700\_41 Rev P05 dated 11/02/2020

Landscape Area D:

ENV0000381C-CAA-00-00-DR-L-C0700\_40 Rev P02 dated 02/12/2019

Planting Schedule:

ENV0000381C-CAA-00-00- DR-L-C0700\_43 Rev P04 dated 11/02/2020

Tree Constraints Plan:

ENV0000381C-CAA-1-XX-DR-C-001 Rev P01 dated 31/07/2019

Landscape Cross Sections:

ENV0000381C-CAA-00-00- DR-L-C0700\_42 Rev P02 dated 02/12/2019

Reason: For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority.

3 No development shall take place until a scheme detailing surface water drainage has been submitted to and approved by the Local Planning Authority in consultation with the Internal Drainage Board. The scheme will make provision for sustainable drainage unless it can be demonstrated that this is inappropriate. Any works shall be implemented in accordance with the approved surface water drainage scheme and maintained thereafter for the lifetime of the development. The development shall not be brought into use until the approved drainage works have been completed.

Reason:

To ensure the provision of adequate and sustainable means of drainage in the interests of amenity and flood risk.

4 Prior to commissioning of the development, an appropriate exceedance flow plan for the flood storage area shall be submitted to and approved in writing by the Local Planning Authority.

Reason: to prevent flooding to properties during extreme flood events and to mitigate against the risk of flooding on and off site.

5 No development shall take place until details of the means of operation, management, repair and maintenance of the flood storage area, associated apparatus/embankments and borrow pits have been submitted to and approved by

the Local Planning Authority. Details to include; plans and schedules showing the flood storage areas, associated apparatus/embankments and borrow pits to be vested with the relevant Statutory Undertaker/s, land owner and highway authority with a clear understanding of who will operate, repair and maintain at their expense, and any other arrangements to secure the operation and maintenance of the approved scheme. The development shall be carried out in accordance with the approved details.

Reason: To prevent the increase risk of flooding and to ensure the future maintenance of the scheme throughout the lifetime of the development.

6 In accordance with the planning documents submitted, to mitigate the impact of the proposed physical modifications and prevent the deterioration of WFD water body status, the proposed development must include the provision and management of adequate ecological mitigation or compensatory habitat on the The Syke from Source to River Foss (GB104027063530) water body. The scheme for mitigation must be implemented as approved. The ecological mitigation and compensatory habitat shall include, but not necessarily be limited to:

o As per drawing I0500\_36a P02 and the Geomorphology and WFD mitigation measures for the Foss Flood Storage Area Technical Note, measures to mitigate the impact of the Black Dike channel realignment - including the creation of a 119m two-stage meandering (sinuous) channel with alternating low level berms, a natural bed substrate and vegetated banks using locally appropriate water-dependant species.

Reason:

In England and Wales, compliance with the WFD is achieved through meeting the requirements of the relevant RBMP. The proposed development falls within the Humber RBMP. Construction and operation of the proposed scheme on the Syke from Source to River Foss (GB104027063530) and Foss from Farlington Beck to the Syke (GB104027063540) water bodies has the potential to adversely impact on the river's ecological, fisheries and geomorphological functionality and value. Any such negative impacts would be in contravention of the Humber RBMP. This condition is required to ensure any such impacts with the potential to contribute to deterioration of water body status are appropriately mitigated in order that no deterioration occurs as a result of the development.

7 In accordance with the planning documents submitted, to mitigate the impact of the proposed physical modifications and prevent the deterioration of WFD waterbody status, the proposed development must include the provision and management of adequate ecological mitigation or compensatory habitat on the Foss from Farlington Beck to the Syke (GB104027063540) water body. The scheme for mitigation must be implemented as approved. The ecological mitigation and compensatory habitat shall include, but not necessarily be limited to:

- o As per Table 2 and Table 4 of the WFD Compliance Assessment, drawings I0500\_40, I0500\_41 and I0500\_23 P02 and the Geomorphology and WFD mitigation measures for the Foss Flood Storage Area Technical Note, measures to mitigate the impacts of flow impoundment on sediment transport continuity associated with the operation of the proposed control structure - including bank re-profiling and the creation of a two-stage channel cross-section with alternating low level berms on the inside of meander bends over a total length of 1.3km of the River Foss from the control structure to the borrow pits.
- o As per Table 2 and Table 4 of the WFD Compliance Assessment, measures to mitigate the loss of soft and semi-natural river bank and bed associated with the embankment and new control structure - including the removal of existing failing hard engineered bank protection within the scheme's boundary.
- o As per Table 2 and Table 4 of the WFD Compliance Assessment and drawings I0500\_34 P01 and I0500\_35 P01, the provision of a natural channel bed substrate through the reaches immediately up and downstream of the proposed control structure.
- o As per Table 2 and Table 4 of the WFD Compliance Assessment, drawing C0700\_36 P05 and the Geomorphology and WFD mitigation measures for the Foss Flood Storage Area Technical Note, the creation of marginal and riparian habitat and channel shading through the planting of trees and shrubs along the upper, mid and lower banks of the channel from the control structure up to the borrow pits.
- o As per Table 2 and Table 4 of the WFD Compliance Assessment, drawings C0700-41, C0700-42, C0700\_36 P05 and the Geomorphology and WFD mitigation measures for the Foss Flood Storage Area Technical Note, the creation and retention of water dependant habitat and wetland areas within the two permanent borrow pits. These habitats must be hydrologically connected to the River Foss via open channels. The shoreline and surrounding area of the borrow pits must be graded and planted with native vegetation including reed beds, marginal planting and trees.

Reason:

In England and Wales, compliance with the WFD is achieved through meeting the requirements of the relevant RBMP. The proposed development falls within the Humber RBMP. Construction and operation of the proposed scheme on the Syke from Source to River Foss (GB104027063530) and Foss from Farlington Beck to the Syke (GB104027063540) water bodies has the potential to adversely impact on the river's ecological, fisheries and geomorphological functionality and value. Any such negative impacts would be in contravention of the Humber RBMP.

This condition is required to ensure any such impacts with the potential to contribute to deterioration of water body status are appropriately mitigated in order that no

deterioration occurs as a result of the development.

This approach is supported by paragraphs 170 and 175 of the National Planning Policy Framework (NPPF) which recognise that the planning system should conserve and enhance the environment by minimising impacts on, and providing net gains for, biodiversity. If significant harm resulting from a development cannot be avoided, adequately mitigated, or as a last resort compensated for, planning permission should be refused.

8 Unless otherwise agreed in writing with the local planning authority, there shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works.

Reason: So that the Local Planning Authority may be satisfied that no surface water discharges take place until proper provision has been made for their disposal.

9 No works shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved by the local planning authority. The CEMP shall include the following:

- i. Risk assessment of potentially damaging construction activities
- ii. Identification of biodiversity protection zones, e.g. areas which require protective fencing or signage during construction
- iii. Method statements covering avoidance measures and sensitive working practices to minimise dangers to at-risk habitats and species; these should include procedures to follow if protected species mitigation licenses need to be obtained
- iv. Identification of where and when ecologists need to be present on-site to oversee works
- v. Responsible persons and lines of communication
- vi. Role and responsibilities of an ecological clerk of works (ECoW) or similar person
- vii. The hours of working on the site including deliveries to and from the site.
- viii. Details of how surface water run off during construction will be managed.

The approved CEMP shall be adhered to and implemented throughout the construction period in strict adherence with the approved details, unless otherwise agreed in writing by the local planning authority.

Reason: These conditions are required to ensure net gains to biodiversity are achieved in accordance with the NPPF and to protect the amenity of the locality

10 No development shall take place until a Landscape and Ecology Management Plan (LEMP) has been submitted to and be approved in writing by the local planning authority. This should be based on the LEMP previously submitted (November 2019) but updated to include the following;

It shall reflect any updated ecological surveys (Water Vole) and the scheme of aquatic planting of local provenance.

The development shall be carried out in accordance with the approved LEMP.  
Reason: These conditions are required to ensure net gains to biodiversity are achieved in accordance with the NPPF.

11 No development shall take place until details of the fish easement in the Foss control structure have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: To protect the local aquatic environment.

12 No works shall be undertaken for the following elements of the scheme until a pre-construction survey during the optimal period has been submitted to and approved in writing by the Local Planning Authority to gain an up-to-date assessment of where both water voles and active burrows, and otter holts or laying up places are present in relation to the proposed works (pre-commencement of these specific elements);

- o Construction of River Foss temporary diversion channel
- o Construction of Flow control structure
- o Construction of Temporary river crossing
- o Re-alignment of Black Dike

Reason: To protect local wildlife.

13 A) No demolition/development shall commence until the post-excavation assessment report (for the archaeological work undertaken in December 2019 and January 2020) has been completed and submitted to the Local Planning Authority, in accordance with the previously approved Written Scheme of Investigation. The report will be accompanied by an assessment of the impact of the proposed development on any of the archaeological remains identified in the evaluation. The report shall also be deposited with the Historic Environment Record.

B) Where archaeological remains cannot be preserved in-situ, no demolition/development shall commence until a further Written Scheme of Investigation has been submitted to and approved by the Local Planning Authority in writing. The scheme shall include an assessment of significance and research questions; and:

1. The programme and methodology of site investigation and recording
2. Community involvement and/or outreach proposals
3. The programme for post investigation assessment
4. Provision to be made for analysis of the site investigation and recording
5. Provision to be made for publication and dissemination of the analysis and records of the site investigation
6. Provision to be made for archive deposition of the analysis and records of the

site investigation

7. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

C) No demolition/development shall take place other than in accordance with the Written Scheme of Investigation approved under condition (B).

D) The post investigation assessment, completed in accordance with the Written Scheme of Investigation approved under condition (B), shall be submitted to the Local Planning Authority within six months of the completion of the site investigation, and provision shall be secured for analysis, publication and dissemination of results and archive deposition. The report shall also be deposited with the Historic Environment Record.

This condition is imposed in accordance with Section 16 of NPPF.

Reason: The site lies within an area of archaeological interest. An investigation is required to identify the presence and significance of archaeological features and deposits and ensure that archaeological features and deposits are either recorded or, if of national importance, preserved in-situ.

14 By the end of the first earthworks season, a detailed planting schedule shall be submitted to and approved in writing by the Local Planning Authority. This shall include the species, stock size, density (spacing), and position of trees, and other plants; and seed mixes, sowing rates and mowing regimes where applicable. It will also include details of ground preparation and tree planting details. This scheme shall be implemented within a period of six months of the practical completion of the development. Any trees or plants which within a period of five years from the substantial completion of the planting and development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority agrees alternatives in writing.

Reason: So that the Local Planning Authority may be satisfied with the variety, suitability and disposition of species of the proposed planting

15 No development for any phase of the development must commence until a Construction Traffic Management Plan for that phase has been submitted to and approved in writing by the Local Planning Authority. Construction of the permitted development must be undertaken in accordance with the approved Construction Management Plan.

The Plan must include, but not be limited, to arrangements for the following in respect of each phase of the works:

a. the parking of contractors' site operatives and visitor's vehicles;

- b. areas for storage of plant and materials used in constructing the development clear of the highway;
- c. measures to manage the delivery of materials and plant to the site including routing and timing of deliveries and loading and unloading areas;
- d. details of the routes to be used by HGV construction traffic and highway condition surveys on these routes;
- e. details of site working hours;
- f. means of minimising dust emissions arising from construction activities on the site, including details of all dust suppression measures and the methods to monitor emissions of dust arising from the development;
- g. measures to control and monitor construction noise;
- h. an undertaking that there must be no burning of materials on site at any time during construction;
- i. removal of materials from site including a scheme for recycling/disposing of waste resulting from demolition and construction works;
- j. details of the measures to be taken for the protection of trees;
- k. details of external lighting equipment;
- l. details of ditches to be piped during the construction phases;
- m. a detailed method statement and programme for the building works; and
- n. contact details for the responsible person (site manager/office) who can be contacted in the event of any issue.

Reason: In the interests of public safety and amenity.

16 There shall be no importation of clay to the site for the development hereby approved, unless otherwise agreed in writing by the Local Planning Authority. This shall be in considered in conjunction with the relevant Local Highway Authorities. Reason: For the avoidance of doubt and to ensure that the proposed construction traffic route is not unduly pressured, with consequential impacts on infrastructural capacity and amenity. In accordance with Paragraph 108 of the National Planning Policy Framework



17 In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

18 Construction work shall not commence in areas where restoration work to return the land to agricultural use is required until a Soil Restoration Method Statement for carrying out such work is submitted to and approved by the Local Planning Authority. The method statement shall cover activities relating to the working, restoration and aftercare of all site soils to be restored; the statement shall include details of:

- I. the areas to be restored;
- II. soil and subsoil stripping;
- III. soil movement and handling;
- IV. soil storage locations and management;
- V. arrangements to prevent spread of soil-borne diseases;
- VI. land drainage arrangements;
- VII. soil replacement including cultivation and seeding;
- VIII. management of differential settlement;
- IX. removal of rocks and other materials capable of impeding cultivation;
- X. detailed aftercare programme and
- XI. timetable for implementation including phasing.

The measures in the method statement shall be implemented in their entirety unless otherwise approved in writing by the Minerals Planning Authority.

Reason: To protect the soil quality of the land to be returned to agricultural use

19 No development shall take place until a scheme for ground water monitoring has been submitted to and approved in writing by the local planning authority. The monitoring shall be carried out in accordance with the approved scheme and the results submitted to the local planning authority.

Reason: To monitor ground water levels at the site.

## **8.0 INFORMATIVES:**

Application Reference Number: 19/02463/FULM

Item No: 3a

## Notes to Applicant

### 1. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraph 38) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in order to achieve a positive outcome:

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2. For noise details on hours of construction, deliveries, types of machinery to be used, use of quieter/silenced machinery, use of acoustic barriers, prefabrication off site etc, should be detailed within the CEMP. Where particularly noisy activities are expected to take place then details should be provided on how they intend to lessen the impact i.e. by limiting especially noisy events to no more than 2 hours in duration. Details of any monitoring may also be required, in certain situation, including the location of positions, recording of results and identification of mitigation measures required.

For vibration details should be provided on any activities which may results in excessive vibration, e.g. piling, and details of monitoring to be carried out. Locations of monitoring positions should also be provided along with details of standards used for determining the acceptability of any vibration undertaken. In the event that excess vibration occurs then details should be provided on how the developer will deal with this, i.e. substitution of driven pile foundations with auger pile foundations. All monitoring results should be recorded and include what was found and mitigation measures employed (if any).

With respect to dust mitigation, measures may include, but would not be restricted to, on site wheel washing, restrictions on use of unmade roads, agreement on the routes to be used by construction traffic, restriction of stockpile size (also covering or spraying them to reduce possible dust), targeting sweeping of roads, minimisation of evaporative emissions and prompt clean up of liquid spills, prohibition of intentional on-site fires and avoidance of accidental ones, control of construction equipment emissions and proactive monitoring of dust. Further information on suitable measures can be found in the dust guidance note produced by the Institute of Air Quality Management, see <http://iaqm.co.uk/guidance/>. The CEMP must include a site specific risk assessment of dust impacts in line with the IAQM guidance note and include mitigation commensurate with the scale of the risks identified.

For lighting details should be provided on artificial lighting to be provided on site, along with details of measures which will be used to minimise impact, such as restrictions in hours of operation, location and angling of lighting.

In addition to the above the CEMP should provide a complaints procedure, so that in the event of any complaint from a member of the public about noise, dust, vibration or lighting the site manager has a clear understanding of how to respond to complaints received. The procedure should detail how a contact number will be advertised to the public, what will happen once a complaint had been received (i.e. investigation), any monitoring to be carried out, how they intend to update the complainant, and what will happen in the event that the complaint is not resolved. Written records of any complaints received and actions taken should be kept and details forwarded to the Local Authority every month during construction works by email to the following addresses  
public.protection@york.gov.uk and planning.enforcement@york.gov.uk

### 3. INFORMATIVE

The applicant should be advised that the Foss (2008) Internal Drainage Board's prior consent is required (outside the planning process) for any development/construction including fences, structures or planting within 9.00m of the bank top of any watercourse within or forming the boundary of the site. Any proposals to culvert, divert, bridge, regrade, fill in, or make a discharge to the watercourse will also require the Board's prior consent.

### 4. INFORMATIVE

The public sewer network does not have capacity to accept an unrestricted discharge of surface water. Surface water discharge to the existing public sewer network must only be as a last resort, the developer is required to eliminate other means of surface water disposal.

### 5. INFORMATIVE:

The applicant's attention is drawn to the response of the Foss Internal Drainage Board dated 19th March 2020 and the response of the Lead Local Flood Authority dated 18th May 2020 with regard to sustainable drainage guidance.

#### **Contact details:**

**Case Officer:** Tim Goodall  
**Tel No:** 01904 551103